

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 601 Reclaimed Water

SPONSOR(S): State Affairs Committee; Agriculture & Natural Resources Subcommittee; and Ray

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 536

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	10 Y, 3 N	Helpling	Massengale
3) State Affairs Committee	16 Y, 0 N, As CS	Renner	Camechis

SUMMARY ANALYSIS

Reclaimed water is defined by law as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility. Extensive treatment and disinfection ensure that public health and environmental quality are protected. The use of reclaimed water can reduce the amount of groundwater and surface water that is required to meet non-potable supply needs such as agricultural or residential irrigation, power generation, or recreation (e.g., golf courses or waterparks). However, there are some uncertainties regarding expanding the use of reclaimed water in the state. Surface water is defined as water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused.

The bill directs the Department of Environmental Protection (DEP), in coordination with the Department of Agriculture and Consumer Services (DACCS) and the five water management districts (WMDs), to conduct a study and submit a report on the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water. The bill requires the report to:

- Identify factors that prohibit or complicate the expansion of using reclaimed water, stormwater, and excess surface water and recommend how those factors can be mitigated or eliminated;
- Identify measures that would lead to the efficient use of reclaimed water;
- Identify the environmental, engineering, public health, public perception, and fiscal constraints of expanding the use of reclaimed water, including utility rate structures for reclaimed water;
- Identify areas where traditional water supply sources are limited and the use of reclaimed water, stormwater, or excess surface water for irrigation or other uses is necessary;
- Recommend permit incentives, such as extending current authorizations for long-term CUPs for all entities that substitute reclaimed water for traditional water sources that become unavailable or otherwise cost prohibitive; and
- Determine the feasibility, benefit, and cost estimate of the infrastructure needed to construct regional storage features on public or private lands for reclaimed water, stormwater, and excess surface water.

The bill requires DEP to hold at least two public meetings to gather input on the study design and provide an opportunity for public comment before submitting the report, which must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor by December 1, 2015.

The bill has an indeterminate, but likely insignificant negative fiscal impact on DEP for the cost of conducting the study and submitting the report (see Fiscal Analysis Section below).

The bill's effective date is July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

For water uses other than private wells for domestic use, the Department of Environmental Protection (DEP) and the water management districts (WMDs) have the authority to require any person seeking to use “waters in the state”¹ to obtain a consumptive use permit (CUP). A CUP establishes the duration and type of allowed water use as well as the maximum amount that may be used. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the WMD and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as “the three-prong test.” Specifically, the proposed water use:

1. Must be a reasonable-beneficial use;²
2. May not interfere with any presently existing legal use of water; and
3. Must be consistent with the public interest.³

In an effort to conserve the State’s potable surface water and groundwater resources, WMDs are authorized to restrict water use to the lowest quality water source appropriate for the specific use, and to adopt rules that identify preferred water supply sources for consumptive uses.⁴ The WMD may consider all economically and technically feasible alternatives to the proposed water source, including alternative water sources, such as desalination, aquifer storage and recovery, and reuse of non-potable reclaimed water.⁵ Of these enumerated alternative water sources, the Legislature expressly encourages the use of reclaimed water as an alternative water source “whenever practicable.”⁶

Section 373.019(17), F.S., defines reclaimed water as “water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.”⁷ Section 403.866, F.S., defines a “domestic wastewater treatment facility” as any plant or other works used for the purpose of treating, stabilizing, or holding domestic wastes. Extensive treatment and disinfection of water from a domestic wastewater treatment facility ensures that public health and environmental quality are protected.⁸

Section 373.019(21), F.S., defines surface water to mean “water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth’s surface.”

Section 373.250, F.S., governs the reuse of reclaimed water in the state. A WMD is authorized to require the use of reclaimed water in lieu of surface water or groundwater when the use of uncommitted reclaimed water is:

¹ Section 373.019(22), F.S., defines “water” or “waters in the state” to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

² Section 373.019(16), F.S., defines “reasonable-beneficial use” to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.

³ Section 373.223(1), F.S.

⁴ See Section 373.2234, F.S.

⁵ Section 373.223(3)(c), F.S.

⁶ Section 373.016(4)(a), F.S.

⁷ See also Florida DEP website on ‘water reuse.’ This information can be viewed at <http://www.dep.state.fl.us/water/reuse/index.htm>.

⁸ *Id.*

- Available;
- Environmentally, economically, and technically feasible; and
- Of such quality and reliability as is necessary to the user.⁹

However, a WMD may neither specify any user to whom the reuse utility must provide reclaimed water, nor restrict the use of reclaimed water provided by a reuse utility to a customer in a permit or in a water shortage order or water shortage emergency order.¹⁰ Reclaimed water is presumed to be available to a CUP applicant when a reclaimed water provider has uncommitted reclaimed water capacity, and there are distribution facilities provided by the utility to the site of the proposed use.¹¹ A WMD may not require a permit for the use of reclaimed water. However, when a use includes surface water or groundwater the permit for such sources may include conditions that govern the use of the permitted sources in relation to the feasibility or use of reclaimed water.¹²

As required in statute and implemented in DEP's Water Resource Implementation Rule,¹³ WMDs must designate water resource caution areas¹⁴ within which CUP permit holders are required to use a "reasonable" amount of reclaimed water, unless using it is not "economically, environmentally, or technically feasible." For areas outside of designated water resource caution areas, DEP encourages local governments to implement programs for the use of reclaimed water. Specifically, WMDs are encouraged to establish incentives, such as longer permit duration and cost-sharing, for local governments and other interested parties to implement programs for reclaimed water use.¹⁵

Reclaimed water is designated as an alternative water source in Florida and the use of reclaimed water can reduce the amount surface water and groundwater consumed in the state. The encouragement and promotion of water conservation and reuse of reclaimed water are state objectives and considered to be in the public interest.¹⁶ The use of reclaimed water provided by domestic wastewater treatment plants permitted and operated under a reuse program approved by DEP is environmentally acceptable and not a threat to public health and safety.¹⁷

The use of reclaimed water saves water that would otherwise need to be withdrawn from surface water and groundwater sources to meet non-potable supply needs such as agricultural or residential irrigation, power generation, or recreation (e.g., golf courses or waterparks). Additionally, reclaiming wastewater reduces reliance on traditional wastewater disposal methods such as surface water discharges, ocean outfalls,¹⁸ or deep injection wells.¹⁹

However, there are some uncertainties that exist pertaining to expanding the use of reclaimed water in the state. According to the Department of Agriculture and Consumer Services (DACCS), one hindrance to increasing reliance on the use of reclaimed water is that there usually is too much of it available during periods of high rainfall and not enough available to meet demands during low rainfall periods. It is necessary to store excess reclaimed water for use during times of peak demand, using water reservoirs or storage tanks. In addition, reclamation facilities and reuse sites are not always located near one another, so reclaimed water must be transported. The transmission lines and facilities

⁹ Section 373.250(3)(c), F.S.

¹⁰ *Id.*

¹¹ Section 373.250(3)(a), F.S.

¹² Section 373.250(3)(b), F.S.

¹³ Section 373.036, F.S., and Rule 62-40, F.A.C.

¹⁴ Pursuant to s. 373.0363, F.S., and Rule 62-40.416, F.A.C., water resource caution areas are designated where water supply problems currently exist or are expected to exist within the next 20 years.

¹⁵ Rule 62-40.416(2), F.A.C.

¹⁶ Section 373.250(1)(a), F.S.

¹⁷ *Id.*

¹⁸ "Ocean outfall" means the outlet or structure through which effluent is finally discharged to the marine environment which includes the territorial sea, contiguous zone and the ocean. Rule 62-600.200(55), F.A.C.

¹⁹ "Injection well" means a well into which fluids are being or will be injected, by gravity flow or under pressure. Rule 62-528.200(39), F.A.C.

necessary to accomplish this can be disruptive or expensive to construct, particularly in older or built-out areas.²⁰

Effect of Proposed Changes

The bill directs DEP, in coordination with DACS and the five WMDs, to conduct a study and submit a report on the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water. The bill requires the report to:

- Identify factors that prohibit or complicate the expansion of using reclaimed water, stormwater, and excess surface water and recommend how those factors can be mitigated or eliminated;
- Identify measures that would lead to the efficient use of reclaimed water;
- Identify the environmental, engineering, public health, public perception, and fiscal constraints of expanding the use of reclaimed water, including utility rate structures for reclaimed water;
- Identify areas where traditional water supply sources are limited and the use of reclaimed water, stormwater, or excess surface water for irrigation or other uses is necessary;
- Recommend permit incentives, such as extending current authorizations for long-term CUPs for all entities that substitute reclaimed water for traditional water sources that become unavailable or otherwise cost prohibitive; and
- Determine the feasibility, benefit, and cost estimate of the infrastructure needed to construct regional storage features on public or private lands for reclaimed water, stormwater, and excess surface water, including the collection and delivery mechanisms for beneficial uses such as:
 - Agricultural irrigation;
 - Power generation;
 - Public water supply;
 - Wetland restoration;
 - Groundwater recharge; and
 - Waterbody base flow augmentation.

The bill requires DEP to hold at least two public meetings to gather input on the study design and provide an opportunity for public comment before submitting the report, which must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor by December 1, 2015.

B. SECTION DIRECTORY:

Section 1. Requires DEP, in coordination with DACS and WMDs, to conduct a study on the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water, and submit a report to the Governor and the Legislature.

Section 2. Provides an effective date of July 1, 2014.

²⁰ DACS bill analysis. On file with Agriculture & Natural Resources Subcommittee staff.
STORAGE NAME: h0601e.SAC
DATE: 3/21/2014

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate, but likely insignificant negative fiscal impact on DEP for the cost of conducting the study and submitting the report. According to DEP, existing staff would assist in the report and study required by the bill and would be paid out of the Administrative Trust Fund and the Water Quality Assurance Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2014, the Agriculture & Natural Resources Subcommittee adopted one amendment and reported the bill favorably with a committee substitute. The amendment specifies that DEP will take the lead in conducting the study required in the bill and that DACS and the WMDs will work in conjunction with DEP. Under the bill, stormwater and excess surface water was referenced as examples of reclaimed water. However, stormwater and excess surface water are not statutorily defined as reclaimed water. The amendment makes a technical change to specify that stormwater and excess surface water are separate from reclaimed water.

This analysis is drafted to the committee substitute as passed by the Agriculture & Natural Resources Subcommittee.

On March 21, 2014, the State Affairs Committee adopted one amendment and reported the bill favorably with a committee substitute. In addition to the other requirements, the amendment requires the report to identify measures that would lead to the efficient use of reclaimed water. The amendment also specifies that DEP must hold at least two public meetings to gather input on the study design.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.